

1 for ANHEUSER-BUSCH, INC. D/B/A ANHEUSER-BUSCH SALES OF SAN DIEGO on several
2 occasions, and although, based on the documentary evidence and opinion of plaintiff's liability expert
3 (which has been timely exchanged), liability appears to be clear, counsel for ANHEUSER-BUSCH,
4 INC. D/B/A ANHEUSER-BUSCH SALES OF SAN DIEGO has doggedly refused to concede the
5 issue or to even discuss settlement of the case on any reasonable basis.

6 As more fully indicated in the accompanying declaration of Aubrey D. Boyd, Esq. in
7 opposition to defendant ANHEUSER-BUSCH, INC. D/B/A ANHEUSER-BUSCH SALES OF SAN
8 DIEGO's ex parte application, it is the plaintiff **NOT** the defendant who has already taken the
9 deposition of one liability witness (defendant's merchandiser), and who has set the deposition of four
10 (4) additional liability witnesses in this case. It is also the plaintiff **NOT** the defendant who has
11 scheduled the site inspection in this case. This discovery is time consuming and extremely costly
12 to the plaintiff, who believes it should be wholly unnecessary given the facts of the case..

13 In spite of the fact that defendant ANHEUSER-BUSCH, INC. D/B/A ANHEUSER-BUSCH
14 SALES OF SAN DIEGO has conducted **NO** liability discovery in the case, their counsel now claims
15 the aforementioned discovery is somehow essential in order for their expert to prepare his/her report
16 in this matter and for them to meet their disclosure deadline - a deadline that was set at the CMC on
17 June 6, 2008, with their agreement.

18 It is also important to note that defendant ANHEUSER-BUSCH, INC. D/B/A ANHEUSER-
19 BUSCH SALES OF SAN DIEGO asks that all dates (see proposed Order) be changed to
20 accommodate their lack of diligence and to allow their experts to do their work on the case. The
21 effect of this will be to unfairly give the defendant additional time for their experts to prepare their
22 opinions and respond to plaintiff's expert report, and to have the added benefit of being able to
23 consider the results of plaintiff's pending discovery. On the other hand, Plaintiff has had to meet
24 her disclosure deadline prior to completion of that same discovery.

25 Pushing the dates back as suggested by the defendant will place the discovery cut-off date
26 to the Friday before plaintiff's counsel is scheduled to begin trial on another case (November 10th),
27 i.e., he will be heavily involved in trial preparation.

28 It should also be noted that plaintiffs' counsel has unsuccessfully (to date) sought defendant

1 ANHEUSER-BUSCH, INC. D/B/A ANHEUSER-BUSCH SALES OF SAN DIEGO's counsel's
 2 cooperation on a number of issues in this case including responses to an amended set of
 3 interrogatories propounded to said defendant by plaintiff, which were inadvertently misnumbered -
 4 counsel for the government on the other hand fully cooperated in resolving that problem relative to
 5 a similar set of interrogatories; the wording of defendant ANHEUSER-BUSCH, INC. D/B/A
 6 ANHEUSER-BUSCH SALES OF SAN DIEGO's request for a protective order/stipulation as a
 7 prerequisite for their release of liability documents which had not been identified/produced in
 8 response to plaintiff's request for production, but which were identified for the first time when
 9 plaintiff's counsel took the deposition of their merchandiser; and plaintiff's request for reasonable
 10 and customary protections as a condition for a stipulation to defendant's request for a medical
 11 examination. No resolution has been reached on any of these matters.

12 In any event, the current difficulty is of defendant ANHEUSER-BUSCH, INC. D/B/A
 13 ANHEUSER-BUSCH SALES OF SAN DIEGO's own making, and is not, therefore, a proper matter
 14 for consideration by way of ex parte application. *Mission Power Engineering Company v.*
 15 *Continental Casualty Company* 883 F.Supp. 488 (C.D. Cal. 1995).

16 For the above reasons, the defendant's ex parte application should be denied.

17
 18 Dated: August 29, 2008

19 _____ Respectfully submitted,

20
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Attorneys for Plaintiff SANDRA S. YBARRA.

ExParte - P&A

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and am not a party to the within action; my business address is: 12702 Via Cortina, Suite 105, Del Mar, CA 92014.

I filed the foregoing documents electronically via CM/ECF in the above entitled court described as:

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO *EX PARTE* APPLICATION FOR ORDER EXTENDING TIME OF EXPERT DESIGNATIONS AND RELATED DISCOVERY

The following are those who are currently on the list to receive e-mail notices for this case.

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I certify under penalty of perjury under the laws of the State of California and the laws of the United States that the foregoing is true and correct.

Dated: August 29, 2008 at Del Mar, California.

s.s Darren J. Quinn

Darren Quinn